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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. A-785

JAMES FRANK NEWMAN, PETITIONER,

versus

STATE OF SOUTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

The Petitioner James Frank Newman respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of South Carolina entered in this proceeding on 29 October 1973.

OPINION BELOW

The opinion of the Supreme Court of South Carolina, reported in .... S. C. ...., 200 S. E. (2d) 82, appears in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of the State of South Carolina was entered on 29 October 1973. A timely petition for an order extending the time for filing a petition for Writ of Certiorari to and including April 12, 1974 was granted by Warren E. Burger, Chief Justice of the United

States on February 19, 1974. This Court's jurisdiction is invoked under 28 U. S. C. 1257 (3).

QUESTION PRESENTED

Did the Supreme Court of South Carolina err in affirming the trial judge's refusal of counsel's motion to suppress evidence illegally obtained and his further error in admitting the pistol and cartridges into evidence as they were the products of an unconstitutional search and seizure.

STATEMENT OF THE CASE

On the morning of June 14th, 1972, City Police of the City of Camden, South Carolina, investigated the shooting of one Pelzer McLure. They went to petitioner's home and denying to petitioner that he was accused by them of a crime, received verbal permission to search the premises. Petitioner was not informed that he had a right to counsel but was told when he asked, "Do you think I ought to call my lawyer?" that ". . . as to your lawyer, that's up to you". During the search, petitioner was held in his home by the Chief of Police. When the gun was discovered, he was formally arrested and advised of his rights under *Miranda* standards. Petitioner was subsequently indicted for assault and battery with intent to kill and found guilty of assault and battery of a high and aggravated nature and of carrying an unlawful weapon.

REASONS FOR GRANTING THE WRIT

The decision below conflicts with the decision of the Supreme Court of the United States as to search or seizure of evidence.

The Supreme Court of South Carolina, in upholding the trial judge's refusal to suppress evidence relied on *Schneckloth v. Bustamonte,* .... U. S. ...., 36 L. Ed. (2d) 854 (1973), to the effect that voluntariness is a question of

fact to be determined from the totality of surrounding circumstances. In this instance, the court ignored the question of validity of the oral consent to search. Petitioner and police were on a first name basis; petitioner questioned as to his need for counsel and, without proper advice, merely acquiesced to the authority of the police. Such search is unlawful, *Amos v. United States* (1921), 255 U. S. 313, 65 L. Ed. 654, 41 S. Ct. 266.

CONCLUSIONS

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Supreme Court of South Carolina.

Respectfully submitted,

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12 April, 1974.